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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-

WILLIARD C. RAMEY,
Petitioner,

v.

RUBY RAMEY,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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Ruby Ramey respectfully submits this Brief in opposition to the Petition for a Writ of Certiorari to review the judgment of the Supreme Court of South Carolina in the above-entitled case.

WHY THE WRIT SHOULD BE DENIED

I

The Supreme Court of South Carolina decided a substantive question of State and Federal Law by properly distinguishing the decision of this Court in Silver v. Silver. 280 *U.S.* 117, 50 *S. Ct.* 57, 74 *L.Ed.* 221, 65 *A.L.R.* 939, *and upon an independent and adequate state ground.*

The respondent is in total agreement with the petitioner in that in 1929 this Court held that the Connecticut Guest Statute was not violative of the Equal Protection Clause of the Federal Constitution. *Silver v. Silver,* 280 U.S. 117, 50 S.Ct. 57, 74 L.Ed. 221, 65 A.L.R. 939. Nevertheless, the respondent cannot agree that the Supreme Court of South Carolina has now decided a substantial federal question in a way contrary to this Courts decision in *Silver.*

The classification scheme utilized to reach the determination made by the Supreme Court of South Carolina in the matter at hand was clearly not that same classification examined in *Silver. Silver,* long before the advent of "New Equal Protection", held that the statutory classification altering substantive rules of negligence by distinguishing gratuitous passengers in automobiles and gratuitous passengers in other types of vehicles was reasonable because the use of the automobile as an instrument of transportation was pecularily the subject of state regulation. In the matter before the Supreme Court of the State of South Carolina, that Court was faced with two classification schemes, i.e. a distinction between those injured as gratuitous guests in motor vehicles, *vis a' vis* persons receiving injuries in other negligent torts, and further, a distinction between non-paying guests and paying passengers in automobiles. Therefore, the question of whether a rational basis existed to support the distinguishing features of these classification schemes created by the South Carolina Guest Statute was not before this Court in *Silver,* and has never been decided by this Court. The specificity of the classification scheme scrutinized in *Silver* has been utilized time and time again as a distinguishing feature by other Courts. See *Brown v. Merlo,* 506 P. 2d 212 (Cal. 1973); *Manistee Bank & Trust Co. v. McGowan,* 232 N.W. 2d 636 (Mich. 1975); *Primes v. Tyler,* 331 N.E. 2d 723 (Ohio, 1975). Some commentators have stated that in *Silver* this Court basically held that the distinction between automobile guests and guests in other vehicles was a permissible classification in light of the abuse originating in the multiplicity of suits by automobile guests. *Comment - Constitutionality of Automobile Guest Statute,* 62 Cal. L. Rev. 408 (March, 1974). Furthermore, aside from scrutinizing the classification scheme examined in *Silver, Silver* itself did not consider the justifications of the Guest Statute to determine if there was a rational connection between the objectives of the statute and the means sought to accomplish those objectives. Of course, *Silver* was decided in 1929, prior to the advent of wide spread automobile liability insurance. It has been said that *Silver* appears to have taken the approach that all regulations of automobiles were constitutional without really examining the regulations in detail. See *Thompson v. Hagin,* 923 P. 23 1365 (Idaho 1974).

Most importantly is the fact that the Supreme Court of South Carolina determined its own Guest Statute to be unconstitutional upon an independent and adequate state ground In its decision, the Court found the statute to be violative not only of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, but also violative of the Equal Protection Clause of the South Carolina Constitution which reads as fillows:

> "The privileges and ammunities of citizens of this State and of the United States under this constitution shall not be abridged, nor shall any person be deprived of life, liberty or property without Due Process of Law, nor shall any person be denied the equal protection of the laws." Article I, §3 of the Constitution of 1895.

This Court has consistently adhered to the rule that it shall not review federal questions if the state judgment is supported by an independent and adequate ground of state law. See *Henry v. State of Mississippi*, 379 U.S. 443, 85 S. Ct. 564, 13 L.Ed. 2d 408; *Minnesota v. National Tea Co.*, 309 U.S. 551, 60 S. Ct. 676, 84 L. Ed. 920; *Wright & Miller, Federal Practice & Procedure*, §4019, et. seq.

The petitioner has failed to note that it was the Supreme Court of the State of South Carolina, through the development of its substantive law, that had set the stage for the present attack upon the Guest Statute. Several months prior to the decision of that Court in this matter, the Court had determined in *Marley v. Kirby*, 245 S.E. 2d 604 (S.C. 1978) that the South Carolina Comparative Negligence Statute, Code Section 15-1-130 was constitutionally defective upon Equal Protection grounds due to its irrational limitations to motor vehicle accidents. The decision of that Court in this matter again rested upon two classification schemes. One, the distinction between non-paying guests and paying passengers in motor vehicles, and, also the irrational limitation to motor vehicle accidents as was found constitutionally defective under *Marley*. Thusly, as this Court recognized in *Silver* that the use of the automobile as an instrument of transportation was pecularily the subject of State regulation, it is respectively submitted that this Court should further recognize the inherent power of the Supreme Court of South Carolina to develop and reshape its own substantive rules of negligence law in accord with its own constitution. The Supreme Court of the State of South Carolina had recently developed the *Marley* standard as a constitutionally significant aspect its substantive state law with reference to negligently inflicted injuries. Under this newly developed rationale the Guest Statute was also found by the Supreme Court of South Carolina to be constitutionally defective, and, in keeping with the petitioner's view, this it had a right to do. *Minnesota v. National Tea Co.*, 309 U.S. 551, 60 S.Ct. 676, 84 L. Ed. 920.

CONCLUSION

For all the reasons stated above, it is respectfully submitted that the Writ should be denied.

Respectfully submitted,

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